IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1109 (SS) OF 2005

Smt. Mohni Devi,
W/o late Shri Yadav Chandra,
R/o Rampura Saker, Tehsil Bajpur,
District-Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Transport Uttaranchal, Dehradun.
2. Managing Director, U.A. S.R.T.C. Dehraudn.
3. Regional Manager, U.A. S.R.T.C., Pithoragarh.

.....Respondents.

Mr. Girish Chandra Lakhchaura, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.1.
Mr. A.N. Sharma, Advocate for the respondents no. 2 and 3.

Dated: 31.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to give compassionate appointment to the petitioner or legal heir eligible under the provisions of U.P. Dependent of Government Servants Dying in Harness Rules, 1974 adopted by the State of Uttaranchal. Further prayer has been made for a writ of mandamus commanding and directing the respondents to pay the entire remaining benefits of petitioner's husband to her. Further prayer is for a writ of certiorari quashing the letter No. 1531 (lEi"k@LFkk 2005 dated 9.8.2005.

2. Briefly stated according to the petitioner, the husband of the petitioner was working with the respondents department

since 1977, on the post of Driver with due honestly and dedication. In the year, 1990, the husband of the petitioner was suspended on the basis of negligent driving of the vehicle of the corporation, due to which an accident took place.

The service of the husband of the petitioner was terminated on 27.1.1990 and aggrieved by the said termination order, he filed an appeal before the authority concerned, which was dismissed. Thereafter, termination order was challenged before the Industrial Tribunal Haldwani, District-Nainital. During the period of suspension, on 05.01.1997, the husband of the petitioner died and after the death of the husband of the petitioner, the petitioner moved an application for substitution in the said Industrial Dispute, which was allowed by the learned Tribunal.

On 22.06.2002, the Tribunal quashed the termination order of the husband of the petitioner and gave this finding that the suspension and termination of the husband of the petitioner was illegal and liable to be set aside.

After obtaining the order from the Tribunal, the petitioner moved a representation for compassionate appointment before the authority concerned on 16.09.2002, but the grievance of the petitioner is that the said representation has not yet been decided.

Learned counsel for the petitioner has submitted that the petitioner has filed the representation after getting the order quashing the termination order on 16.09.2002 because, the right to file representation occurs from 22.06.2002, when the order was passed quashing the suspension order.

It has further been submitted by the learned counsel for the petitioner that the petitioner is a poor lady having no source of livelihood and she is on the verge of starvation, the husband of the petitioner is survived by his wife i.e. the

petitioner and two sons aged about 33 years and another aged about 25 years.

So far as the appointment under Dying in Harness is concerned, the Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has observed as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds,

there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"*For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.*

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment of the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the

deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, writ petition deserves to succeed. A writ of mandamus is issued directing the authority concerned to dispose of the representation of the petitioner giving compassionate appointment to one of the family members of the petitioner within a period of two months from the date of presentation of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

31.03.2006
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